

§ 405.1887

§ 405.1887(a) to the Board or to the Administrator, through the Office of the Attorney Advisor, specifically informing that the matter(s) to be addressed by the reopening is currently under appeal to the Board or to the Administrator or is covered by the same determination that is under appeal.

(4) *Reopening of determination within the time for appealing that determination to the Board.* CMS or an intermediary may reopen, on its own motion or on request of the provider(s), a Secretary or intermediary determination for which no appeal was taken to the Board, but for which the time to appeal to the Board has not yet expired, by sending the notice specified in § 405.1887(a) of this subpart.

[73 FR 30265, May 23, 2008]

§ 405.1887 Notice of reopening; effect of reopening.

(a) In exercising its reopening authority under § 405.1885, CMS (for Secretary determinations), the intermediary or the reviewing entity, as applicable, must provide written notice to all parties to the determination or decision that is the subject of the reopening. Notices of—

(1) Reopening by a CMS reviewing official or the Board must be sent promptly to the Administrator.

(2) Intermediary reopenings of determinations that are currently pending before the Board or the Administrator must meet the requirements specified in § 405.1885(c)(3) and (c)(4) of this subpart.

(b) Upon receipt of the notice required under § 405.1887(a) of this subpart, the parties to the prior Secretary or intermediary determination or decision by a reviewing entity, as applicable, must be allowed a reasonable period of time in which to present any additional evidence or argument in support of their positions.

(c) Upon concluding its reopening, CMS, the intermediary or the reviewing entity, as applicable, must provide written notice promptly to all parties to the determination or decision that is the subject of the reopening, informing the parties as to what matter(s), if any, is revised, with a complete explanation of the basis for any revision.

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(d) A reopening by itself does not extend appeal rights. Any matter that is reconsidered during the course of a reopening, but is not revised, is not within the proper scope of an appeal of a revised determination or decision (as described in § 405.1889 of this subpart).

[73 FR 30266, May 23, 2008]

§ 405.1889 Effect of a revision; issue-specific nature of appeals of revised determinations and decisions.

(a) If a revision is made in a Secretary or intermediary determination or a decision by a reviewing entity after the determination or decision is reopened as provided in § 405.1885 of this subpart, the revision must be considered a separate and distinct determination or decision to which the provisions of §§ 405.1811, 405.1834, 405.1835, 405.1837, 405.1875, 405.1877 and 405.1885 of this subpart are applicable.

(b)(1) Only those matters that are specifically revised in a revised determination or decision are within the scope of any appeal of the revised determination or decision.

(2) Any matter that is not specifically revised (including any matter that was reopened but not revised) may not be considered in any appeal of the revised determination or decision.

[73 FR 30266, May 23, 2008]

Subparts S–T [Reserved]

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

AUTHORITY: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1320b–8, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

SOURCE: 41 FR 22511, June 3, 1976, unless otherwise noted. Redesignated at 42 FR 52826, Sept. 30, 1977.

§§ 405.2100–405.2101 [Reserved]

§ 405.2102 Definitions.

As used in this subpart, the following definitions apply:

Agreement. A written document executed between an ESRD facility and